STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1196

Husen A. Guffe,
Relator,

vs.

Wal-Mart Associates, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed June 26, 2023
Affirmed
Bratvold, Judge

Department of Employment and Economic Development
File No. 48750547-3

Husen A. Guffe, Bloomington, Minnesota (pro se relator)

Wal-Mart Associates, Inc., Burnsville, Minnesota (respondent employer)

Keri Phillips, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Relator worked stocking shelves for seven years before his employer discharged him. Relator seeks review of an unemployment-law judge's (ULJ) decision that the

employer discharged relator for employment misconduct, and therefore, relator was not eligible for unemployment benefits. Relator argues that (1) the ULJ's factual findings were clearly erroneous, (2) the ULJ should have obtained and considered video evidence discussed during the hearing, and (3) the interpreter provided inadequate translation services. Because the record evidence supports the ULJ's factual findings and relator raises the second and third issues for the first time on appeal, we affirm.

FACTS

The following summarizes the evidence presented at the hearing before the ULJ. Relator Husen A. Guffe worked for respondent Wal-Mart Associates Inc. since 2014 as a packing-team associate in Burnsville. Wal-Mart discharged Guffe on April 13, 2022.

Guffe applied for unemployment benefits, and respondent Minnesota Department of Employment and Economic Development (DEED) at first determined that Guffe was eligible. Wal-Mart appealed DEED's eligibility determination, arguing that Guffe was discharged for employment misconduct because he threatened a team leader, which violated the employer's policy prohibiting any form of violence or threats of violence.

The ULJ conducted a telephone hearing on June 29, 2022. Guffe was self-represented, his primary language is Somali, and he was provided with interpreter services for the hearing. Guffe testified on his own behalf and did not call other witnesses. Wal-Mart appeared through A.M., whose job title was "coach," and called no other witnesses. Wal-Mart introduced five documents into evidence—the initial eligibility determination, several questionnaires Guffe filled out, and an employment-discharge packet that included a copy of Wal-Mart's workplace-violence policy.

A.M. testified that Guffe was terminated for employment misconduct after threatening a team leader in "a violent manner." A.M. testified that on April 12, 2022, two team leaders, J.S. and R.G., met for a coaching session with Guffe to address Guffe's job performance. Guffe and J.S. conversed in the Somali language, which R.G. does not understand. At the end of the conversation, Guffe threatened J.S., who told R.G. in English that Guffe threatened to stab him with a knife "in the throat." A.M. testified that Wal-Mart investigated by speaking with J.S. and viewing video footage from the office where the coaching session occurred. The recording, which has no audio, showed Guffe gesture with his hands. A.M. did not see the video recording. A.M. was not at the store on the day of the incident, and he learned what happened from another coach.

Guffe testified that he met with J.S. and spoke in the Somali language about a mistake on his timecard. Guffe asked for a correction, and J.S. refused. Guffe acknowledged that he may have gestured while they talked but denied that he threatened J.S. Guffe added that during his seven years of employment, he had no conflicts with J.S. or other Wal-Mart employees. Guffe argued that Wal-Mart could not prove any threat occurred because J.S. no longer worked there, R.G. did not understand the Somali language, and the video had no audio. Guffe stated that Wal-Mart never interviewed him about the incident and did not give him a reason for his discharge.

The ULJ then called R.G. as a witness and placed R.G. under oath. R.G. is employed at Wal-Mart as a team leader and testified that he was present for the conversation between Guffe and J.S. about Guffe's attendance. R.G. confirmed that the conversation was in the Somali language and that he does not understand Somali. R.G. testified that, during the

conversation with J.S., Guffe got upset and raised his voice. Guffe "started getting louder and he started getting animated with his hands." At the end of the exchange, Guffe "put his fingers to his throat, and he made a comment to [J.S.] and he stood up." Guffe pointed to his own throat and told R.G. and J.S. to "get out of here." J.S. then told R.G. that Guffe had threatened him. R.G. tried to calm Guffe down and even "gave Mr. Guffe an opportunity to go home and relax, to calm down, but he chose not to." R.G. was familiar with Guffe because he often gave him tasks when they worked together. R.G. always spoke English when he gave Guffe assignments, and Guffe complied with the instructions.

The ULJ issued a written decision and determined that Wal-Mart discharged Guffe "because he made a threat of physical violence against another employee." The ULJ found Guffe "not credible" and found R.G. "more credible." The ULJ determined "[i]t is more likely than not Guffe threatened [J.S.] with stabbing [J.S.] in the throat." Applying the definition of "employment misconduct" from Minn. Stat. § 268.095, subd. 6(a) (2022), the ULJ determined that Guffe was discharged under this statutory provision because "[t]hreats of physical violence made in the workplace are highly disturbing and disruptive and inappropriate, for obvious reasons," and "Wal-Mart had the right to reasonably expect that Guffe not threaten to stab his team lead in the throat during a conversation involving some work performance issues." The ULJ concluded that Guffe was ineligible for unemployment benefits under Minn. Stat. § 268.095 (2022).

Guffe requested reconsideration of the ULJ's ineligibility determination. On August 19, 2022, the ULJ issued an order affirming his prior decision after determining

that Guffe "makes no new argument and offers no new information or evidence" and that the prior decision was "factually and legally correct." Guffe sought certiorari review.

DECISION

Guffe argues that the ULJ erred by determining that Guffe was discharged for employment misconduct. "In unemployment benefit cases, the appellate court is to review the ULJ's factual findings in the light most favorable to the decision and should not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). "Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). An appellate court will not disturb the ULJ's factual findings when evidence substantially sustains them. Minn. Stat. § 268.105, subd. 7(d) (2022). "Determining whether a particular act constitutes disqualifying misconduct is a question of law that we review de novo." *Stagg*, 796 N.W.2d at 315.

An applicant is ineligible for unemployment benefits if they are discharged for employment misconduct, defined as "any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." Minn. Stat. § 268.095, subds. 4(1), 6(a). "As a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct." *Schmidgall*, 644 N.W.2d at 804.

Guffe first argues that the ULJ erred by finding that R.G.'s testimony was credible and that it was "more likely than not" that Guffe threatened to stab J.S. in the throat.

Specifically, Guffe contends that R.G. could not "give clear context of the argument without understanding the Somali language."

We are not convinced. There were three participants in the conversation, two of whom testified before the ULJ. The ULJ's factual findings turned on credibility determinations, and a fact-finder is "not bound by witness testimony, even if uncontradicted." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 224 (Minn. 2021). "A factfinder is not required to accept even uncontradicted testimony if improbable or if surrounding facts and circumstances afford reasonable grounds for doubting its credibility." *Id.* (quotation omitted). When witness credibility significantly affects the outcome of the decision, the ULJ must give a reason for crediting one witness's testimony over another. Minn. Stat. § 268.105, subd. 1a(a) (2022). An appellate court generally defers to a ULJ's credibility determinations. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *rev. denied* (Minn. Oct. 1, 2008).

The ULJ determined that "Guffe was not credible denying he made a threat of physical violence." The ULJ found that R.G. "was much more credible. [R.G.] was not originally called as a witness but when he was, he gave spontaneous testimony consistent with Wal-Mart['s]" witness. The ULJ considered that R.G. did not understand the Somali language but still found him credible. The ULJ explained that R.G.

> had worked with Guffe and had given him work direction in the past in English, and so, was familiar with Guffe's manner. [R.G.] saw Guffe's gesture in which Guffe put a finger to Guffe's own throat when he made an angry expression at [J.S.] . . . [and] could tell that Guffe was quite angry.

Guffe argues that R.G. "was very good friends with [J.S.] and they both held the same job position." Guffe also argues that R.G. did not bring up the hand gesture until the ULJ inquired, "Did anything else happen?" DEED acknowledges that Guffe's description of R.G.'s testimony is accurate but responds that the ULJ's credibility determinations are supported by the record because A.M. and R.G. testified to the same relevant facts and R.G. was called "without prior notice."

Guffe's argument essentially asks this court to reweigh the evidence and the credibility of the witnesses. We decline to do so. An appellate court "cannot reweigh the evidence to determine where the preponderance lies." *Abbey v. Cont. Programming Specialists, Inc.*, 377 N.W.2d 28, 31 (Minn. App. 1985), *rev. denied* (Minn. Jan. 23, 1986). We view the evidence in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Guffe also argues that we should reject the ULJ's findings because the evidence offered against him was "out of character and untrue." Guffe also claims that J.S. was influenced by his desire to keep his job. We are not persuaded. The ULJ allowed Guffe to question those testifying against him and to tell his side of the story. The ULJ called R.G. as a witness without notice to either side. R.G.'s testimony was spontaneous and consistent with the version of events presented by A.M. Because the ULJ gave reasons for the credibility determinations and the record evidence supports the ULJ's factual finding that Guffe threatened J.S., we reject Guffe's claim that the evidence was "untrue."

In his brief to this court, Guffe raises two other issues that were not raised during the unemployment proceedings: (1) whether the ULJ erred when he failed to obtain and consider the video recording to which A.M. referred in his testimony and (2) whether the Somali interpreter provided inadequate translations and affected the ULJ's ability to understand Guffe's "articulation about the case." We decline to address either issue for three reasons.

First, Guffe failed to raise these issues during the unemployment hearing or in his request for reconsideration. An appellate court generally will not consider issues that were not presented and considered in the prior proceedings. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that reviewing courts generally will consider only issues presented and considered below and that parties may not obtain review by raising a different theory on appeal); *Peterson v. Ne. Bank-Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011) (applying *Thiele* to an unemployment case). Because both issues were not presented to the ULJ, we decline to consider them.

Second, Guffe fails to cite legal authority that supports his argument that the ULJ was required to obtain the Wal-Mart video.[1] Assertions of error not supported by any citation to authorities are waived and will not be considered on appeal unless any prejudicial error is obvious. *State by Humphrey v. Mod. Recycling, Inc.*, 558 N.W.2d 770,

[1] We note that the ULJ has a duty to assist the parties during proceedings. *See* Minn. R. 3310.2921 (2021) ("The unemployment law judge must assist all parties in the presentation of evidence."). Here, the ULJ informed the parties at the outset of the hearing that "[b]oth parties have the right to ask that the hearing be rescheduled so that documents or witnesses can be subpoenaed." Neither party asked to reschedule or continue the hearing for any reason, such as obtaining the video recording.

772 (Minn. App. 1997) (quoting *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971)); *Yusuf v. Masterson Pers., Inc.*, 880 N.W.2d 600, 605 (Minn. App. 2016) (applying *Modern Recycling* to an unemployment case). Thus, we also decline to consider the video-recording argument because Guffe inadequately briefed the issue.[2]

Third, our review of the hearing transcript does not support Guffe's claim that the interpreter services were inadequate. Guffe's argument is vague, alleging "grammatical errors" generally. While grammatical errors are reflected in the transcript, nothing suggests the translation was inaccurate. More importantly, the ULJ understood Guffe's testimony. Following Guffe's testimony, the ULJ stated that "Guffe denies making any type of threat" to J.S. As a result, even if we assume that Guffe is correct and grammatical errors occurred during interpretation, these errors did not prejudice Guffe's substantial rights. *See Lamah v. Doherty Emp. Grp., Inc.*, 737 N.W.2d 595, 603 (Minn. App. 2007) (concluding relator's substantial rights were not prejudiced where communication problems were immaterial and did not lead to erroneous fact findings).

[2] Even if we were to consider the merits of the video-recording argument, we would reject it because Guffe does not argue—and the record does not establish—that he was prejudiced by the absence of the video recording. Guffe and R.G. offered direct and conflicting testimony about what was said, although both testified that Guffe made gestures. The video recording did not include audio and therefore would have been cumulative of the other testimony about Guffe's gestures. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 530 (Minn. App. 2007) (holding relator was not entitled to relief where ULJ's failure to admit a document was harmless error).

Thus, the ULJ did not err when it determined that Wal-Mart discharged Guffe for employment misconduct.

Affirmed.